PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number
	Q76293

Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	Filed
	10/612,089	July 3, 2003
	First Named Inventor	
	Sven Maurice Joseph OOGHE	
	Art Unit	Examiner
		Mon Cheri S.
	2416	DAVENPORT

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons(s) stated on the attached sheet(s).

    Note: No more than five (5) pages may be provided.

☑ I am an attorney or agent of record.

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May 29, 2009

Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of   Docket No: Q76293

Sven Maurice Joseph OOGHE, et al.

Appln. No.: 10/612,089   Group Art Unit: 2416

Confirmation No.: 5803   Examiner: Mon Cheri S. DAVENPORT

Filed: July 3, 2003

For: RESOURCE ADMISSION CONTROL IN AN ACCESS NETWORK

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the

Examiner's Final Office Action dated February 3, 2009, Applicant files this Pre-Appeal Brief

Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

The Examiner rejected claims 1-10 rejected under 35 U.S.C. § 103(a) as allegedly being

unpatentable over Ma et al. (US Patent Number 5,953,338) in view of Christie et al. (US Patent

6,115,380). Applicants respectfully traverse the rejections at least for the following reasons.

In the Amendment filed March 27, 2009 ("previous Amendment"), Applicants argued

that Ma does not teach or suggest that after the user has requested said data stream, and if the

user lacks support for negotiating or acknowledging the bandwidth through said access network

with said quality of service, the virtual connection is identified out of said plurality of virtual

connections provisioned to the user capable of guaranteeing said quality of service between said

user and said access server.

In response, the Examiner asserts that:

> "Ma et al. teaches a user can request or borrow from an already
> provisioned virtual connection, the leased capacity is to other customers
> on an ATM backbone, customers already have capacity, and are
> requesting more when they (specifically) need it." (page 2 of the Advisory
> Action)

The Examiner further asserts that:

> "Ma et al. teaches when a user lacks support the required
> bandwidth, and the user is already provisioned bandwidth and needs more
> capacity. The user will borrow extra capacity from users that are not using
> their provisioned bandwidth. This is not a new connection as argued, as
> the bandwidth capacity is adjusted to accommodate the required
> bandwidth request." (page 3 of the Advisory Action)

Firstly, Ma does not teach or suggest that if the connection established for the first user

lacks support for negotiating the bandwidth, a connection already provisioned *to the first user* is

identified as being capable of guaranteeing the quality of service. Instead, Ma discloses that

other user connections (rather than connections provisioned to the requesting user) are affected

when a user lacks support for negotiating a bandwidth. That is, as the Examiner seemingly

acknowledges, Ma discloses that when a first user lacks support for negotiating a bandwidth,

other user capacity is borrowed.

Accordingly, Ma does not teach or suggest that after the user has requested said data

stream, and if the user lacks support for negotiating or acknowledging the bandwidth through

said access network with said quality of service, the a virtual connection is identified out of said

plurality of virtual connections provisioned to the user capable of guaranteeing said quality of

service between said user and said access server, as recited by claim 1. Christie does not cure

this deficiency.

Secondly, the Examiner provides no support for the assertion Ma's request for bandwidth is not a new connection. As noted in the previous Amendment, Ma discloses throughout the specification that <u>virtual connections are provisioned as needed in response to a user request</u> for such a connection (see at least col. 7, lines 5-8 and col. 13, lines 18-58) rather than being already provisioned when a user requests capacity to make a call. Specifically, Ma discloses that the size of a virtual path is adjusted to provide extra capacity so that <u>additional virtual channels can be created</u> to accommodate a request from a client (col. 13, lines 38-41). <u>When a client requests for a call</u>, a centralized call admission control/usage monitor module 145 determines what virtual paths and virtual channels <u>will be connected</u> depending on a number of factors including quality of service expectations (column 7, lines 13-26) to another client. The control module 140 determines whether to allow the virtual connection <u>to be setup</u> (column 7, lines 5-8). An ATM switch 130K adjusts, alters, creates, or destroys the actual size of the virtual path containing virtual connections, so that, if possible, the call requested by the client can be made (column 7, lines 31-36).

Clearly, Ma's <u>virtual connections are provisioned as needed in response to a user request</u> for such a connection (see at least col. 7, lines 5-8 and col. 13, lines 18-58) rather than being <u>already provisioned</u> when a user requests capacity to make a call. That is, Ma is directed to <u>setting up a connection in response to a request</u>, rather than identifying an already provisioned connection. Thus, Ma does not teach that a user requests a data stream <u>after</u> the provisioning of a plurality of virtual connections, as recited by claim 1.

Christie does not cure the above noted deficiencies of Ma. Specifically, similarly to Ma, Christie's system provides ATM connections on a call by call basis (col. 5, lines 62-64). In other words, a call is requested before a connection between users 100 and 102 is established by signal processor. Accordingly, Christie does not teach or suggest that the user requests a data stream after the provisioning of a plurality of virtual connections specific to the user, as recited by claim 1.

Thirdly, the Examiner's above assertions do not support the conclusion that the alleged plurality of connections are specifically provisioned to the first user when the first user requests a data stream. Instead, Ma discloses that a requesting party (e.g., a first user) may borrow capacity from *another* party.

Accordingly, Applicants submit that Ma does not teach or suggest requesting, by the user, a data stream from a content provider after the provisioning of a plurality of virtual connections to the user, as recited by claim 1. As discussed in the previous Amendment, Christie does not cure this deficiency.

Because Ma and Christie, alone or in combination, do not teach all of the features of claim 1, Applicants submit that the claim is not rendered unpatentable by Ma and Christie. Applicants also submit that claims 2-6, being dependent on claim 1, are patentable at least by virtue of their dependency.

Independent claim 7 recites features similar to those discussed above in conjunction with

claim 1. Thus, Applicants submit that claim 7 is patentable at least for reasons analogous to

those discussed above regarding claim 1. Applicants also submit that claims 8-10, being

dependent on claim 7, are patentable at least by virtue of their dependency.

Respectfully submitted,

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